

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5298 of 1985

Date of decision: 10-10-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAYASHREEBEN N VAIDYA

Versus

STATE OF GUJARAT

Appearance:

Mr. N. K. MAJMUDAR for Petitioner
Ms. Siddhi Talati for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/10/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner, an auxiliary Nurse Midwife serving at the E.S.I.Hospital, Baroda, has filed this petition praying for direction to the respondents to give her the benefit of pay-scale of staff nurse,i.e. scale of Rs.380-560 with effect from 1-1-1973 with all consequential benefits. In support of her claim the petitioner placed reliance on the decisions of this court produced at annexures- A and B to the petition.

2. From the reply to the special civil application, the undisputed facts which have come on record are that the petitioner was initially appointed as mid-wife and not as auxiliary nurse midwife. The post of auxiliary nurse midwife and midwife carry identical pay-scales though lower than the pay-scale of post of nurse midwife or staff nurse. The pay-scale of the latter post was prescribed at Rs.200-340 with effect from 1-6-1967, whereas the pay-scale of the post of auxiliary nurse / auxiliary nurse midwife and midwife were prescribed at Rs.160-265. These pay-scales were revised with effect from 1-1-1973. For the post of nurse midwife or staff nurse it was prescribed at Rs.380-560 whereas for auxiliary nurse and auxiliary nurse midwife and midwife it was prescribed at Rs.260-400. So the claim of the petitioner for the pay-scale of staff nurse is wholly untenable.

3. Even if it is taken to be a case that the petitioner was auxiliary nurse / auxiliary nurse midwife, then her claim for parity of pay-scale with staff nurse does not stand to any logic or justification. The two cases on which reliance has been placed by the petitioner appear to be cases of Ayurvedic Department, and those cases have been decided on their own facts. In the matter of claim for parity in the pay-scale the petitioner has to make out a case that the source of recruitment, educational qualification as well as duties and functions to be discharged by the holders of those posts are in all respects identical. Merely on the basis of some statement made that they are discharging identical duties, the same cannot be accepted, more so when the Pay Commission has clearly drawn distinction in these two posts and on the basis of that distinction different pay-scales have been prescribed accordingly.

4. In the reply to the special civil application, the respondents have come up with the case that auxiliary nurse midwife is supposed to work under the supervision

of staff nurse and health visitors. If that is the position, then certainly it is an inferior post and no parity can be claimed for the higher pay-scale. It is not unknown that helpers are attached to technicians, but it does not mean that they should be given parity in the pay-scales. They are persons to help the technicians and similarly here also the petitioner has to help the staff nurse in discharge of her duties. Taking into consideration the totality of the facts of the case, I do not find any justification or merit in the claim of the petitioner for the pay-scale of Rs.380-560 with effect from 1-1-1973. There is yet another ground on the basis of which this claim of the petitioner otherwise also does not stand to merit. Pay-scales are prescribed on the recommendations of the Pay Commission. That is an expert body, which, after considering all the aspects of the matter prescribed a particular pay-scale for the post. In the present case also the pay-scales for the post of auxiliary nurse midwife / auxiliary nurse and staff nurse has been prescribed on the recommendation of the Pay Commission with effect from 1-4-1967 and 1-1-1973 respectively. Since inception two different pay-scales are being prescribed for these two posts. So the presumption goes that the Pay Commission has taken these two posts to be altogether different distinct and separate posts and further one post to be inferior to the other. These pay-scales were given in the form of revised pay scale rules framed under Article 309 of the Constitution of India. In the present case the pay-scale of Rs.260-400 of the post of auxiliary nurse midwife has been prescribed under the Gujarat Civil Services (Revision of Pay) Rules, 1975, and similarly the pay-scale of the post of nurse midwife and staff nurse has been prescribed at Rs.380-560. These pay-scales have been prescribed under statutory rules and those provisions have not been challenged by the petitioner in this petition also. So on this ground also the claim of the petitioner cannot be granted.

4. In the result this special civil application fails and the same is dismissed. Rule discharged. No order as to costs.

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